IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DOROTHY E. NICKLOFF,

Plaintiff,

vs.

No. 71 1123 WMB

LIGGETT & MYERS, INCORPORATED, a Delaware corporation, BROWN & WILLIAMSON TOBACCO CORPORATION, a Delaware corporation, R. J. REYNOLDS TOBACCO COMPANY, a New Jersey corporation, and TOBACCO INSTITUTE INCORPORATED, a District of Columbia corporation,

Defendants.

Washington, D. C.

Monday, April 17, 1973

- - -

DEPOSITIONS OF

HORACE R. KORNEGAY
and
WILLIAM KLOEPFER, JR.

- - -

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Washington, D. C.,

Tuesday, April 17, 1973

Depositions of

HORACE R. KORNEGAY
and
WILLIAM KLOEPFER, JR.

witnesses, called for examination by counsel for the plaintiff, pursuant to notice, a copy of which is attached to the court copy of these depositions, taken in the law offices of Covington & Burling, Seventh Floor, 888 Sixteenth Street, N.W. Washington, D. C., beginning at 9:30 a.m., before Virginia M. Mallick, a Notary Public in and for the District of Columbia, when were present on behalf of the respective parties:

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BUTLER, JEFFERSON & FRY
By JAMES G. BUTLER, ESQ.,
and
MICHAEL A. K. DAN, ESQ.,
for the plaintiff.

WYMAN, BAUTZER, ROTHMAN & KUCHEL,
By FRANK ROTHMAN, ESQ.,
and
MARIANA PFAELZER, ESQ.,
for the defendant Tobacco Institute Incorporated.

SHOOK, HARDY, MITCHELL & BACON,
By WILLIAM W. SHINN, ESQ.,
for the defendant Brown & Williamson Tobacco Corp.

LAWLER, FELIX & HALL
By THOMAS E. WORKMAN, JR., ESQ.,
for the defendant R. J. Reynolds Tobacco Company

ALSO PRESENT:

JOHN J. QUINN, ESQ.; FRANCIS K. DECKER, JR., ESQ.;
HERBERT DYM, ESQ.; ROBERT P. FRY, ESQ.; and
EDWARD J. JACOB, ESQ.

- - -

E X H I B I T S

		MARKED FOR IDENTIFICATION
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Plaintiff's Exhibit No. 154	(Attached)	166
Plaintiff's Exhibit No. 34-A	(Attached)	189
Plaintiff's Exhibit No. 155	(Attached)	296

C O N T E N T S

	EXAMINATION BY COUNSEL FOR:
	PLAINTIFF
WITNESS	(Mr. Butler)
HORACE R. KORNEGAY	136
WILLIAM KLOEPFER, JR.	207

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Thereupon,

HORACE R. KORNEGAY

after having been duly sworn, resumed the stand and testified further as follows:

FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. BUTLER:

Q Mr. Kornegay, your attorney yesterday showed me a letter dated October 11, 1967, with the Tide Rock Corporation addressed to Senator Earle Clements of the Tobacco Institute and signed by Reginald B. Wills, the Vice President of the Tobacco Institute. Is Senator Clements still with the Tobacco Institute?

A Yes.

Q What is his position?

A Consultant.

Q Is he on the payroll of the Tobacco Institute?

MR. ROTHMAN: I object on the grounds that it is not relevant to the issue of jurisdiction and I instruct the witness not to answer.

MR. BUTLER: In addition to taking the deposition of Mr. Kornegay it may be necessary to take the deposition of Senator Clements and I want to establish that. Primarily, let me say that we have come to Washington in order to try to get some of the facts on your motion with respect to jurisdiction. It is

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your motion, not ours, and we feel we should be given great liberation in asking questions and getting answers so that at the time of the presentation of the facts to the judge he doesn't have to say, "You don't have enough information. You have to go back to Washington."

I feel that delay is obviously to your advantage and I request at this time that you give us the broadest possible scope in giving us answers to jurisdiction or which may lead to matters relative to jurisdiction. I feel it is unfair to the court and unfair to us in order for us to get what we are clearly entitled to under the applicable federal applications.

MR. ROTHMAN: We have sat here through this morning and all through yesterday. We marked for identification more than 140 documents. We gave them out of an effort on our part to be cooperative. We have given you documents that you did not even call for in your order to produce.

We have replied that we would continue to supply you with documents as you requested them. However, we have a clear, unequivocal understanding both orally and in writing that these depositions in Washington are limited as to the issue of jurisdiction to determine whether or not you have jurisdiction over the Institute in California.

On those grounds, we are proceeding and it is only on

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those ground rules that I make objections. I think any court would agree that the manner in which Senator Clements is paid has absolutely no relevancy as to your having jurisdiction.

MR. BUTLER: It may lead to relevant information, certainly, and the activities of Senator Clements with respect to California may be of significance in this case. I don't know because I don't know the answer, but I am entitled to inquire.

MR. ROTHMAN: I am foreclosing you from inquiring into salary.

BY MR. BUTLER:

Q Are you familiar with Tide Rock Corporation?

A I am. I have heard the name.

Q Where have you heard the name, around the Tobacco Institute?

A Yes, sir.

Q Does it have any relationship with the Tobacco Institute?

A Now?

Q At this time or in the past.

A Not Since I have been at the Institute.

Q What is the nature of the business of Tide Rock Corporation?

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A I don't know.

Q Other than Tide Rock Corporation, does the Tobacco Institute have other corporations that it employs?

MR. ROTHMAN: Will you reframe that question?

BY MR. BUTLER:

Q Are there public relations firms that the Tobacco Institute employs either in direct subsidies or direct payment or any kind of subsidy whatsoever?

A Presently, we have on retainer Warren Donahue, who is a public relations consultant.

Q Where is he located?

A New York.

Q What is the purpose of that particular employment?

MR. ROTHMAN: I am going to object to the question on the grounds that it is not relevant as to the issue of California jurisdiction. I request and instruct the witness not to answer.

BY MR. BUTLER:

Q Is it Walter Donahue?

A Warren.

Q Is his employment in any way an attempt to fulfill the policy of the Tobacco Institute to effect the communications respecting smoking and health in the United States?

MR. ROTHMAN: I don't know why I have to continue to say

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this. I think the witness should be asked questions and I will permit him to answer questions relative to the conduct of the Institute in California. If anything, questions that do not search out conduct of the Institute in California are not relevant to California jurisdiction.

MR. BUTLER: It certainly would appear to me that it could lead to relevant information. I don't think we should be foreclosed again from inquiring into the relationship of this company.

MR. ROTHMAN: I do not think it relevant nor do I think it will lead to relevant material to inquire over the next day with respect to the Tobacco Institute's activity in states other than California if, in fact, there is such activity.

MR. BUTLER: But if it employs agents that are in turn active with respect to California, I think I am able to for that reason.

MR. ROTHMAN: I agree. If you want to ask this witness whether Donahue works in California, I have no objection.

MR. BUTLER: How does he know if Warren Donahue works in California? I don't think I should be foreclosed from this line of inquiry.

MR. ROTHMAN: I don't think you have the right to an answer.

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BY MR. BUTLER:

Q What are the activities of Warren Donahue with respect to California, if you know?

A None.

Q Does it affect the public in any way?

MR. ROTHMAN: Limit the question to California and I will permit the witness to answer.

BY MR. BUTLER:

Q What does the Warren Donahue Company do generally in California? What is the nature of its business?

A He is a public relations consultant.

Q To the Tobacco Institute alone or to others also?

A I assume he has other clients. I don't know. We are a client of his.

Q Does he handle relationships with the Tobacco Institute in such media as The New York Times?

A To this point, he has not.

Q How about with television?

A No.

Q Radio?

A No.

Q In what particular area of public relations is he employed?

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MR. ROTHMAN: Are you asking in what area of public relations he is involved as it relates to the State of California?

MR. BUTLER: That would be calling for a conclusion on his part. I want to know generally how and where and for what reason he is employed.

MR. ROTHMAN: I will let the witness answer if you limit the question to the State of California. I don't think it is relevant with respect to any other states. I let him answer the New York Times question because we have taken the position earlier in the deposition that he could answer questions in that area, although by doing so we don't concede anything. If you don't limit the questions to California, we are going to be going all day.

MR. BUTLER: I refuse to accept that limitation.

MR. ROTHMAN: Then I instruct the witness not to answer the last question.

BY MR. BUTLER:

Q Are there any other public relations consultants other than the previously mentioned which are employed by the Tobacco Institute in the United States?

MR. ROTHMAN: Same objection; same instructions. If you limit it to California, I will permit him to answer.

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BY MR. BUTLER:

Q Does the Tobacco Institute attempt in any way to place its message on television?

MR. ROTHMAN: I don't think we have established, Counsel, that the Tobacco Institute has a message. Testimony yesterday, which went on and on and on, was that it attempted to put forth the facts. You have established that so many times now.

MR. BUTLER: What facts?

MR. ROTHMAN: Are you asking me the question?

BY MR. BUTLER:

Q According to the Tobacco Institute's scope of activities in Document No. 83, the Institute is chiefly dealing with the relationship of smoking and health; is that correct?

A Yes.

Q That is its message?

MR. ROTHMAN: Just a moment. I am not going to permit this. You have had this witness on deposition all afternoon yesterday. We went almost until 6:00. Now, because you have gone back to your hotel or office, you are not permitted to start the deposition all over again. These questions and this information have all been asked yesterday. We are not going to permit the witness to again answer questions which were fully covered yesterday.

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BY MR. BUTLER:

Q That is the purpose of the Tobacco Institute; is that correct?

MR. ROTHMAN: I object on the grounds that the question has been asked and answered.

BY MR. BUTLER:

Q With respect to that particular purpose, do you attempt to implement that policy in any way through the media of television?

MR. ROTHMAN: The question is ambiguous and makes no sense. Can't we really get to it, Mr. Butler? I don't want to stop all of these questions.

BY MR. BUTLER:

Q Do you understand the question?

MR. ROTHMAN: Do you?

THE WITNESS: Really, I don't. I think I know what you are driving at, but I don't know how to answer it because of policy, position and those things.

BY MR. BUTLER:

Q Within the area of developing public understanding of the smoking and health controversy, you attempt to use the media of television?

A If I understand that, no, sir.

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Q In no way whatsoever?

A No, sir. We have been disqualified since January 1, 1971.

Q You mean by reason of the law?

MR. ROTHMAN: By reason of the law?

THE WITNESS: No, we just don't use it.

BY MR. BUTLER:

Q Why January 1, 1971?

MR. ROTHMAN: Why what?

BY MR. BUTLER:

Q Why do you cut off your answer to January 1, 1971?

MR. ROTHMAN: How is that relevant to the issue of jurisdiction? Your question was do you use television.

MR. BUTLER: He said not after January 1, 1971. I want to know why he cut it off.

MR. ROTHMAN: I don't think that is relevant. Why he does something, that does not establish jurisdiction, does it?

MR. BUTLER: It may.

MR. ROTHMAN: How?

MR. BUTLER: Because it reflects on what was done before January 1, 1971.

MR. ROTHMAN: With respect to jurisdiction?

MR. BUTLER: Yes.

MR. ROTHMAN: Sir, I don't understand.

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MR. BUTLER: I don't want to make my argument here on the record. I will make it to the court.

MR. ROTHMAN: All right, I make an objection.

BY MR. BUTLER:

Q What did you do before January 1, 1971, with respect to television?

A The only thing that I can recall we ever did was we had some spots that were supplied to some of the television stations throughout the country on a nationwide basis to be run if the station chose as a public service. We have not, at any time, to my knowledge paid for any television time.

Q These were voluntary spots in answer to the anti-cancer crusade on television; is that correct?

MR. ROTHMAN: I don't have the remotest idea what the "anti-cancer crusade" is.

BY MR. BUTLER:

Q Are you familiar with the ASH Organization?

MR. ROTHMAN: What?

BY MR. BUTLER:

Q ASH, A-S-H?

A Yes, I am aware of that. or organization

Q Have you attempted by the placement of the television spots you mentioned to answer the contentions of ASH with

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respect to the relationship between smoking and cancer?

MR. ROTHMAN: This witness did not say that there was a placement of any aid. You said that. That is a distortion of the testimony.

MR. BUTLER: You have made your objection.

BY MR. BUTLER:

Q With respect to the placement of these television spots on a voluntary basis, was this an attempt to answer the television spots of ASH?

MR. ROTHMAN: I object to the form of the question on the grounds that it assumes facts not in evidence, to wit, that there is any placement of television spots.

BY MR. BUTLER:

Q In the manner in which he explained it?

MR. ROTHMAN: That is not a question.

BY MR. BUTLER:

Q You submitted these particular television -- is there a word of art for them?

A Spot is the best.

Q With respect to these television spots, how many of them did you develop?

MR. ROTHMAN: In California?

MR. BUTLER: At the Tobacco Institute, first of all.

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MR. ROTHMAN: I don't think that is relevant.

MR. BUTLER: I am entitled to find out the number.

MR. ROTHMAN: Why are you?

MR. BUTLER: If you can't see that, you can't see very much. You are just being obstreperous.

MR. ROTHMAN: No, I think you have decided that you are going to continue to cause me to object so that you might be able to show a whole series of objections on the record. It seems to me we have established the difference of opinion with respect to this issue. We don't have to go on now for three hours solidifying the pattern. We have established it. You have made the order on this point. I have indicated our point on the record. Now why are we going on and on and on?

MR. BUTLER: This pattern that you have insisted has been established is not covered by this particular question. I think I am entitled to know how many spots have been developed by the Tobacco Institute.

MR. ROTHMAN: My position is that you are entitled to inquire how many spots were made available to California. I would not oppose that. If they had a series of spots that they maintained in their Washington office, it would have no relevancy to the issue of jurisdiction in California. I am going to instruct the witness not to answer the question unless you limit

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it to California.

BY MR. BUTLER:

Q Did you use a particular agency in order to release these spots to television?

MR. ROTHMAN: In California?

MR. BUTLER: First I want to know what agency was used?

MR. ROTHMAN: My objection stands.

MR. BUTLER: I am entitled to find out what particular agencies they used.

MR. ROTHMAN: Mr. Butler, any question you put to this witness with respect to his conduct in California, I will permit to be answered. Questions which are outside of California are not relevant to jurisdiction in our judgment. I respectfully request that you not persist. We have established our position and you have established yours. Let's go on.

MR. BUTLER: I intend to persist.

BY MR. BUTLER:

Q What agency did you use, if any, in order to place these spots?

MR. ROTHMAN: I object on the grounds heretofore stated and instruct the witness not to answer.

BY MR. BUTLER:

Q Did you release these spots to National Network

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Television, to national networks?

A Yes, sir.

Q Do you know which national networks?

A I did not personally send them out. I am assuming ~~these~~ They went to the networks; NBC, ABC and CBS.

Q Do you know over what period of time they were shown?

A I don't think they were ever shown.

Q Do you mean they were not accepted by the networks?

A I said I don't think they were ever run, or shown on television. If you use the term "acceptance" by showing or running them on the networks, then they were not "accepted".

Q Anywhere in the United States?

A You are asking in reference to networks. I don't know.

Q Did you have any monitoring of these particular programs in order to determine whether they were shown?

A Not to my knowledge.

Q Who would know that in your organization? Would Mr. Kloepfer know?

A If anybody knew, he would know.

Q In what year was that done?

MR. ROTHMAN: Was what done?

MR. BUTLER: The release to the networks of the television

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spots previously mentioned.

THE WITNESS: To the best of my recollection it was the latter part of 1971.

MR. ROTHMAN: We are making a record, Mr. Butler, which we both I am sure feel very seriously makes some inquiry in light of what we were discussing yesterday as to how it would come to your knowledge that there were such spots available when they were never shown to anyone through any public medias, suggests to me again that there has to be some serious questions asked as to how both documents and information have come into the possession of the plaintiff. We would like you to consider, as you have indicated you would yesterday, not only supplying us with the source of the documents in Exhibit B, but also now supplying us with the source of your information with respect to these spots.

MR. BUTLER: Are you finished?

MR. ROTHMAN: Yes.

BY MR. BUTLER:

Q Mr. Kornegay, also at this particular time was there a ruling of the Federal Communications Commission with respect to the showing of anti-smoking spots on television which affected your policy of informing the public with respect to smoking and health?

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MR. ROTHMAN: The question is objected to both as to the form and relevancy.

MR. BUTLER: What is the form that you want corrected?

MR. ROTHMAN: I don't know what propaganda you are talking about but the objection is that it is not relevant to the issue of jurisdiction.

MR. BUTLER: Is it because of the form or the substance that you object?

MR. ROTHMAN: Both.

MR. BUTLER: I will rephrase it.

BY MR. BUTLER:

Q Did the Tobacco Institute participate at any litigation in the courts?

MR. ROTHMAN: Same objection on precisely the same grounds.

MR. BUTLER: Are you directing him not to answer?

MR. ROTHMAN: Yes.

BY MR. BUTLER:

Q Does the Tobacco Institute hire lawyers in California other than the present lawyers?

MR. ROTHMAN: Other than the present lawyers?

MR. BUTLER: Right.

MR. ROTHMAN: You can answer that yes or no.

THE WITNESS: No.

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BY MR. BUTLER:

Q Does the Tobacco Institute hire attorneys to participate in hearings before national federal regulatory agencies?

MR. ROTHMAN: Objected to on the grounds: a, that it is not relevant, and b, on the grounds that it is confidential. I instruct the witness not to answer.

MR. BUTLER: You mean the fact that they hire them or don't hire them?

MR. ROTHMAN: You asked if they were hired for specific purposes. What purposes people hire attorneys for is privileged. They don't have to tell you.

BY MR. BUTLER:

Q Do you hire attorneys who appear before national regulatory agencies of the government?

MR. ROTHMAN: I submit to you, sir, unless you are talking here about California, it is not relevant and I instruct the witness not to answer.

MR. BUTLER: Obviously, a national regulatory agency includes California, but it is not limited to California.

MR. ROTHMAN: I don't know, maybe they are studying the sale of cigarettes in Maryland.

MR. BUTLER: Do you still direct him not to answer?

MR. ROTHMAN: Yes.

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BY MR. BUTLER:

Q What was the year that you came to the Tobacco Institute?

A 1969.

Q Can you tell me why you appear as Vice President and Counsel in Exhibit No. 3-C in 1968?

A That is an incorrect date.

Q Were you ever a vice president?

A Yes, sir.

Q When?

A From January of 1969, until the first day of June, 1970.

Q Whoever gave us that is incorrect; is that right?

A As far as the date is concerned, yes, sir. It should be 1969.

Q Were you ever Counsel for the Tobacco Institute?

A My title from the first date of my employment was Vice President and Counsel until the day of my --

Q Could we have some explanation from the counsel as to why this date is incorrect?

MR. ROTHMAN: I can't help you, Counsel.

MRS. PFAELZER: We prepared some of those documents for you and I directed certain things to be prepared for you.

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Perhaps whoever prepared them typed in the wrong date. That may very well be what happened with respect to that.

MR. BUTLER: They are prepared from the original books and records?

MRS. PFAELZER: Certainly they were.

MR. ROTHMAN: Mr. Butler, when you asked for a compilation of officers or employees, I don't quite know what you mean when you say they were prepared from the official books and records. There is no document in existence which we maintain which has a compilation. We have had to draft documents to fit your request from information which was within the Institute. Somebody typed the wrong date. 1969 should have been the date.

BY MR. BUTLER:

Q I take it you received no compensation whatsoever during 1968 from the Tobacco Institute?

A That is correct.

Q Can you identify for me each of the members of the Board of Directors with respect to the member corporation on the Board of Directors for 1970?

A Mr. L. A. Bantle is with U.S. Tobacco Company. Thomas M. Bloch is with Bloch Brothers.

Q Tobacco?

A Tobacco Company. Martin J. Condon, III, is with

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the Conwood Corporation.

Q What are they, tobacco wholesalers?

A No, sir. They were manufacturers of tobacco products. Joseph L. Cullman, III, is with Phillip Morris, Inc. Then, Len J. Dillon -- I will have to check and supply you with that. I am not familiar with him. Edwin P. Finch is with Brown and Williamson. A. H. Galloway is with R. H. Reynolds Industries, now Tobacco Institute. W. Brooks Sloane is with Lauris Brothers.

Q What are they?

A Manufacturers of tobacco products. Panos B. Georgopulo, is with the Georgopulo Company, likewise, manufacturers of tobacco products. Milton E. Harrington is with Liggett & Myers. Arthur T. McGonigle is with Helms Products. I believe that is a manufacturer of tobacco products.

Q How about the alternate members?

A The alternates?

Q Yes.

A They would be with the same companies.

Q Each name on that list is represented by an alternate and the co-alternate is from the company from which the principal is listed; is that correct?

A Exactly.

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Q This is typical for the Board of Directors, that you have men present; is that correct?

A No, sir. There have been changes.

Q But the Board of Directors is consistent in representing the market?

A The Board of Directors has been represented by marketing companies and manufacturing companies' representatives.

MR. ROTHMAN: What are marketing companies?

THE WITNESS: Representatives of manufacturing companies.

BY MR. BUTLER:

Q Manufacturing companies alone?

A Yes.

Q For instance, some of the manufacturing companies don't also engage in marketing of cigarettes; is that correct?

A It depends on what you mean by "marketing".

Q Market at retail of finished products.

A No, not to my knowledge, do any of them operate at the retail level.

Q I am marketing a finished product to the general public through a retailer?

A They manufacture a finished product and then place it in the channels of consumers.

Q Including California?

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A Including the whole United States and in some instances, foreign. Anybody who will buy.

Q In the list of the companies, reference is made to the Tobacco Institute, Inc., care of Corporation Trust, 2677 Park Avenue, New York, New York. Can you tell me what that address represents in the scheme of the organization of the Tobacco Institute?

A We are a New York corporation. As I understand it, under New York law, we have to have a person, firm or corporation designated in the State of New York.

Q That is just a designated agent?

A To comply with the New York law. There is no business transacted at that address at all.

Q Then you have a Tobacco Institute testing lab at Chevy Chase, Maryland?

A Yes.

Q How big is that facility?

MR. ROTHMAN: Objected to as irrelevant to the issue of jurisdiction.

MR. BUTLER: In order to find out, I have to find out primarily how big they are.

MR. ROTHMAN: No you don't.

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BY MR. BUTLER:

Q What is that, a separate division of the Tobacco Institute, the testing laboratory?

A Separate in the sense that they are not located at our downtown office.

Q How many people are over at that particular facility?

MR. ROTHMAN: Objected to as not relevant to the issue of jurisdiction.

BY MR. BUTLER:

Q What does the testing laboratory do?

A They test the tar and nicotine of cigarettes.

Q For how long have they been doing that?

MR. ROTHMAN: Objected to, and I instruct the witness not to answer.

BY MR. BUTLER:

Q Do they have any contracts with educational organizations such as the University of California?

MR. ROTHMAN: Do you want to reframe that question? If you are asking if they have contracts with the University of California, I do not object. If you are asking if they have contracts with institutions such as the University of California, I object because the question is ambiguous and impossible to answer.

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BY MR. BUTLER:

Q Are their activities limited to the Tobacco Institute facilities located at Chevy Chase, Maryland?

MR. ROTHMAN: I am not sure I understand the question. Do you mean do they test only in Chevy Chase?

MR. BUTLER: Are any of their activities other than at that facility? I am trying to get a blanket question to limit the area of inquiry.

MR. ROTHMAN: You may answer.

THE WITNESS: Are any of their activities at any place other than their Chevy Chase location? No, sir, that is the only place they do anything.

BY MR. BUTLER:

Q Is this testing lab the testing place for the cigarette industry generally?

MR. ROTHMAN: Objected to as not relevant to the issue of jurisdiction and further on the grounds that it is ambiguous.

BY MR. BUTLER:

Q Are you familiar with an FTC ruling with respect to tar and nicotine in cigarettes?

MR. ROTHMAN: Objected to as not relevant to the issue of jurisdiction and I instruct the witness not to answer.

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BY MR. BUTLER:

Q In the table of organization, Exhibit No. 3-A, there are three vice presidents listed: Franklin B. Dryden, Mr. Kloepfer and John Mills. Can you tell me the general area of concern of each of those senior vice presidents?

A Yes, sir. William Kloepfer operates in the area of communications. John Mills, in the area of governmental relations, and Franklin Dryden, in the area of administration.

Q Administration of the Tobacco Institute itself?

A Yes.

Q Do the duties of Mr. Mills with respect to governmental operations include both federal and state governmental operations?

A No, sir.

Q Just state?

A No, sir.

Q What government?

A Federal.

Q Just federal government?

A Yes, sir.

Q Then with respect to the vice presidents as opposed to the senior vice presidents, you have Anne H. Duffin, Frederick Panzer, Frank L. Sundstrom and Frank J. Welch. Can

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you tell me the general area of concern of each of those vice presidents?

A Anne Duffin is William Kloepfer's assistant. Therefore, her area of work is in communications. Fred Panzer is an assistant to Mr. Mills. His area is in the area of government relations. Dr. Welch is in the area of state relations. Mr. Sundstrom is in the area of governmental relations, federal.

Q Excuse me?

A Federal government relations.

Q So Mr. Sundstrom and Mr. Panzer are assistants, then, to Mr. Mills?

A Yes. Did I get them all for you?

Q I think so. As vice president and counsel, Mr. Ehringhaus, and he is also connected with Mr. Welch and also with Mr. Mills?

A Yes, sir.

Q Your medical director, Dr. Gilbert D. Huebner, M.D., what is his general area of concern?

A Keeping up with the medical literature in the area of smoking and health.

Q Simply with relationship to being informed about it, but does he, under your direction, do anything with that information?

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MR. ROTHMAN: I have been very lenient, but none of these last questions have anything to do with jurisdiction. There has to come a point where you just abuse me and my leniency. I now instruct the witness that he not answer any further.

MR. BUTLER: Is that also true with respect to the scope of activity of the other officers of the corporation? You will direct him not to answer?

MR. ROTHMAN: Go ahead and ask him.

BY MR. BUTLER:

Q With respect to Mr. Huebner, can you tell me generally what his duties are?

MR. ROTHMAN: I think the witness answered.

MR. BUTLER: I thought you interrupted and we didn't finish.

MR. ROTHMAN: I think in an effort to move along. I don't have any objection to him describing the general nature of his duties.

BY MR. BUTLER:

Q He simply keeps up with the current medical picture with respect to the relationship of smoking and health?

A Yes.

Q Does he advise the other members of the Tobacco Institute with respect to that particular area in connection

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with the communication of information to the general public?

MR. ROTHMAN: This is objected to and I instruct the witness not to answer unless the question is related to California.

BY MR. BUTLER:

Q Mr. Marvin A. Kastenbaum; can you tell me generally what his duties are in the area of statistics?

MR. ROTHMAN: He is in the general area of statistics. You just said it.

MR. BUTLER: I am asking him -- what statistics do you have reference to?

MR. ROTHMAN: That is not relevant to the issue of jurisdiction and I instruct the witness not to answer.

BY MR. BUTLER:

Q Is Mr. Kastenbaum's duties involved with analyzing the statistics released by the federal government with respect to the relationship between smoking and health?

MR. ROTHMAN: Same objection and same instruction.

BY MR. BUTLER:

Q Yesterday, we mentioned "The Cigarette Controversy", eight questions and answers. At that time, I don't think you could remember the name of the mailing firm which was involved in mailing these particular documents. Can you remember it

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today?

A No, sir.

Q I show you the fact that there were actually three versions of that document and ask you if that isn't a fact?

MR. ROTHMAN: I would say that I can think of at least three specific instances where we have been through this term.

MR. BUTLER: He said there were only two and I want to clarify it.

MR. ROTHMAN: I said when I was presenting them to you that there were three. When we were giving you the documents in the wee, early hours of yesterday morning, we told you there were three. There has been no testimony inconsistent with that.

MR. BUTLER: He said yesterday there were two and I want to clarify them.

BY MR. BUTLER:

Q How many versions were there, two or three?

MR. ROTHMAN: Go ahead.

THE WITNESS: Three.

BY MR. BUTLER:

Q What was the difference in the third version from the other two?

A Insofar as I know, it was the format and the size of the publication.

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Q Dealing with availability for mailing; is that correct?

A That is correct. That is what I thought I said yesterday.

MR. BUTLER: I would like you to mark this for identification. It is called, "Scientists' Questions, Smoking and Health Claims, Proceedings of the New York Society of Security Analysts, on June 11, 1970."

XXX

(The document referred to was marked Plaintiff's Exhibit No. 154 for identification and attached hereto.)

BY MR. BUTLER:

Q Could you identify for me Exhibit No. 154?

A This is the reprint of a program which took place before the Society of Security Analysts in New York.

Q Were you present at that program?

A No, sir.

Q Was that booklet reprinted by the Tobacco Institute?

A Yes, sir.

Q For what purpose?

MR. ROTHMAN: It is irrelevant unless you limit your questions to California.

MR. BUTLER: That is absolutely and utterly ridiculous. I want to find out the general purpose of the reprint.

MR. ROTHMAN: I say it is not relevant unless you can

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establish there is some California contact with it.

BY MR. BUTLER:

Q Was that mailed to people?

A Was it mailed? Is that the question?

Q That is right.

A Yes, sir.

Q To whom?

A I am not absolutely sure, other than to the security people throughout the country.

Q General brokers?

A Brokers.

Q Any financial people?

A I do not know.

Q You would assume so?

A I would assume so, people related and interested in ~~security.~~ securities

Q Was that done in order to reinforce the price of cigarette shares on the general market?

MR. ROTHMAN: What, reinforce the price of cigarette shares?

MR. BUTLER: Cigarette company shares on the market.

MR. ROTHMAN: Objected to as irrelevant and I instruct the witness not to answer. Are we in an anti-trust case?

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MR. BUTLER: Can we have that list to whom that particular document was mailed in connection with jurisdiction?

MR. ROTHMAN: Certainly.

MRS. PFAELZER: I have no knowledge that there is any such list.

BY MR. BUTLER:

Q Is there a list?

A I do not know.

Q It is customary and usual to keep such a list; is that right?

MR. ROTHMAN: I told you, Counsel, that we would search for a list. If there was one, we would produce it.

MR. BUTLER: But because of the hesitancy with respect to the production of documents, I think I am entitled to find out from this gentleman whether in the usual and ordinary course of business they have a list.

MR. ROTHMAN: Sir, you are presumptious and you have a lot of nerve. There has been no hesitancy to supply you with any documents. The only hesitancy that has been exhibited in this deposition is your absolute refusal to advise us as to the source of documents.

We have supplied you with everything requested. There was no request for a mailing list in connection with Exhibit No. 154

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and the instant you made the request, I told you we would seek it out and supply it to you. Do not characterize our activity as being reluctant to produce.

BY MR. BUTLER:

Q Do you ordinarily keep such a list of the names of people to whom such a publication is mailed?

A That would depend on how the distributions were made. If it were made direct from the Institute, we would. Otherwise, probably not.

Q But you would then have some sort of an agreement with the mailer covering the number of copies mailed and perhaps we could find the information at least as to whether it was mailed into California; is that correct?

MR. ROTHMAN: If the records exist, we will supply them, Counselor.

MR. BUTLER: I am trying to find out their mode of procedure. I am not doubting your word. I just want to make sure I have the mode of procedure not only for this particular document but for other documents that might be involved.

THE WITNESS: We would receive the billing based on the number of copies that the mailer mailed.

BY MR. BUTLER:

Q Perhaps also some information with respect to the

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general regions and areas to which the mailing was sent?

A Yes, sir, I would certainly assume so.

Q On November 11, 1972, you went to Palm Springs and you delivered an address to the California Association of Candy Distributors?

A November 11, 1972?

Q Right.

A Yes, sir.

Q We have Exhibit No. 74, which has previously been identified. That is, in fact, a copy of your remarks at that particular time and place?

A Yes, sir.

Q Previous to that time this correspondence, identified as 69, 70, 71 and 72, took place between you and somebody called John J. Kelly with respect to your attending that particular convention?

A This certainly appears to be copies of the correspondence between myself and John J. Kelly.

Q Has Mr. Kelly ever come here to Washington?

A Yes, sir.

Q For what purpose?

A I don't know. The one occasion I saw him, he came by the office and I met him for the first time. We chatted about

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no particular subject.

Q Do you know whether he came to see anybody at the Tobacco Institute?

MR. ROTHMAN: Are we on a reserve jurisdiction now?

MR. BUTLER: The contacts both from and to are important in jurisdiction.

MR. ROTHMAN: Go ahead.

THE WITNESS: Your question was, "Did he see anybody else there"?

BY MR. BUTLER:

Q Was he there to see somebody at the Tobacco Institute, to your knowledge?

A He came by to see me. I know that.

Q For what purpose?

A He had never met me and he is the Executive of the California Distributors. When the tobacco people come into Washington, they usually come by and pay a social call.

Q Other than a social call, was there something happening in California that was of concern to him or you?

A I remember nothing that was happening in California ~~that was happening~~ at that particular time. He was talking primarily about ~~our coming out and~~ my coming out and talking to

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Q He said, "Also, as we discussed, if your plans include a west coast presentation of your 'press briefing', I would much appreciate an invitation to attend." What is referred to by your "press briefing"?

MR. ROTHMAN: Do you mean what is Mr. Kelly referring to?

MR. BUTLER: Yes.

MR. ROTHMAN: You and I have arrived in agreement for the first time.

THE WITNESS: What does he mean by that?

MR. ROTHMAN: What does Mr. Kelly mean by "press briefing"?

BY MR. BUTLER:

Q What is meant by your "press briefing"?

MR. ROTHMAN: Go ahead.

THE WITNESS: On occasions, I have along with others at the Institute presented press briefings in various places throughout the country. It was composed of a statement on the history and facts relating to the smoking and health controversy; which is more in the nature of a background for the press than anything else.

BY MR. BUTLER:

Q Have you done this?

MR. ROTHMAN: Mr. Butler, I believe you established yesterday, or if you didn't I will tell you now, that there were

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no press briefings within the context of what we are talking now about in the State of California. It seems to me that we are off on a frolic here. It is not relevant if it didn't happen in California. Why are we spending any time on it?

BY MR. BUTLER:

Q Is there a format from which you give this press briefing?

MR. ROTHMAN: I instruct the witness not to answer on the grounds that it is not relevant.

BY MR. BUTLER:

Q Did something happen during that particular year which required your attendance in California? Let me be more specific --

A Which year?

Q 1972.

MR. ROTHMAN: That is the only trouble you have with the question?

BY MR. BUTLER:

Q Was there something happening in California that required your attendance other than the invitation to speak?

A On this occasion?

Q Yes.

A No, sir. That was the only reason I was there.

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Q During the years 1970 to 1972, was there an attempt by an initiative measure to raise the taxes on cigarettes from $.10 a pack to $.20 a pack?

MR. ROTHMAN: An attempt by whom?

MR. BUTLER: I just want to know generally if he knows about the legislation or initiative.

MR. ROTHMAN: I submit that is not relevant to jurisdiction and I instruct the witness not to answer.

BY MR. BUTLER:

Q Are you familiar with something called The Watson Initiative in California?

MR. ROTHMAN: Same objection.

BY MR. BUTLER:

Q Was there an initiative in California that had, as a result, the raising of taxes on cigarettes?

A Was there in California?

Q Some initiative which had as a result the fact that there would be a raised tax on cigarettes in California?

A As I understand it, if the initiative to which you ~~referred would have~~ had reference passed, it would have resulted in a ~~raise~~ rise in taxes.

Q That was called The Watson Initiative. Does that refresh your recollection?

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A I have heard of it.

Q That is the one that we are talking about?

MR. ROTHMAN: That is what you say it is.

MR. BUTLER: I want to know if he knows about it.

THE WITNESS: I have heard of it, but I had nothing to do with it.

BY MR. BUTLER:

Q Did you send any money to the Association of Tobacco and Candy Distributors to assist in the stoppage of passage of that particular initiative?

A No, sir.

Q By "you", I include the Tobacco Institute and all of its officers and directors.

A That is right.

Q Did the Tobacco Institute participate in any way in connection with the political opposition to The Watson Initiative in California?

A Not to my knowledge.

Q Are you familiar with any particular support of the California Association of Tobacco and Candy Distributors, Inc., to the defeat of The Watson Initiative?

MR. ROTHMAN: I object on the grounds that it is not relevant to the issue of jurisdiction.

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BY MR. BUTLER:

Q Do you have any financial ties of any kind or nature whatsoever to the California Association of Tobacco and Candy Distributors, Inc.?

MR. ROTHMAN: Objection because of its form. "Any financial ties whatsoever" -- what does that mean?

BY MR. BUTLER:

Q Does any money come from them to you or you to them in any form whatsoever?

MR. ROTHMAN: We covered that, I thought, in detail yesterday.

MR. BUTLER: No, we had some reference to Mr. Brown and his associates. I am inquiring now in a broader concept than the relationship with Mr. Brown.

MR. ROTHMAN: Other than through Mr. Brown, is there any financial relationship between the two organizations? Is that what you are asking?

MR. BUTLER: That is right.

MR. ROTHMAN: You can answer that.

THE WITNESS: There is no agreement or plan of any relationship now.

BY MR. BUTLER:

Q I understand agreement or plan, but as long as you

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have been president, do you know of any financial dealings, whether by plan or otherwise, between your company, Tobacco Institute, and the California Association of Tobacco and Candy Distributors, Inc.?

A There may have been occasions when we assisted them financially.

Q In what way?

A By sending them some money.

Q For what?

A To help them with their programs in the State of California as we do other local organizations throughout the country.

MR. ROTHMAN: I might say, Mr. Butler, that that is the precise identical answer that you got to the same question yesterday.

BY MR. BUTLER:

Q On how many such occasions?

A I could not tell you.

Q Would there be a record at the Tobacco Institute?

A Yes, sir.

MR. ROTHMAN: You also asked that yesterday.

BY MR. BUTLER:

Q Do you know the extent and the nature of the contributions?

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A No, sir, I do not at the moment.

Q By that I am asking you, say, within $100,000 for any one particular year, could you tell us?

A I could tell you we have never done anything close to that, there or anywhere else in the country.

Q Do you know that you haven't done $100,000? Have you done as much as $50,000 with them?

A I don't think so.

Q As much as $25,000?

A I could not say.

Q At any rate, it would be less than $100,000?

MR. ROTHMAN: The witness has answered that. Let's go on, Mr. Butler. Come on.

MR. BUTLER: I think I am entitled to inquire as to his specific knowledge.

MR. ROTHMAN: Sir, you are not entitled to inquire into anything that you inquired into yesterday. Don't abuse me.

MR. BUTLER: You are the most unabused person in the room.

MR. ROTHMAN: I don't feel that way.

BY MR. BUTLER:

Q In your speech, you made some joke about Coscar which I appreciated and you stated, "Coscar has grown up by now and has probably become the leader of an anti-smoking group where

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he is continuing to complain and demand that our industry help him put us out of business. With your help and support, we don't intend to let him have his way." What help and support were you referring to?

MR. ROTHMAN: It seems to me that the relevant inclusions that are to be reached from this exhibit, which is Mr. Kornegay's speech in California -- if there is any relevancy to it at all -- is the existence of the speech in terms of what we are talking about which is jurisdiction. What was said, the contents of the speech, is not at this time a relevant matter. I am going to object to your inquiry as to the substance of the speech on the grounds that it has nothing to do whatsoever with the jurisdiction of the California court.

MR. BUTLER: Are you directing him not to answer?

MR. ROTHMAN: Yes. Just so there is no misunderstanding on that last objection, Mr. Butler, the exhibit which is the transcript of the speech bears what number?

MR. BUTLER: No. 64.

MR. ROTHMAN: That is one of the documents which we turned over to you yesterday so you have available to you and before the court if you desire the exhibit. It seems to me on a deposition to explore jurisdiction, there ought to be no reason why you have to be getting into the substance of the exhibit.

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That is the basis of my objection.

BY MR. BUTLER:

Q In response to a request to produce each and every survey which has been cited by the Tobacco Institute, Inc., showing that smokers are unusually energetic, marry more often, drink more liquor and black coffee than non-smokers, Exhibits Nos. 23, 24, 25, 26, 27, 28, 29 and 30, have been produced. Are you familiar with those documents in any way whatsoever?

A Let me look at them.

(The documents were shown to the witness.)

THE WITNESS: I am not familiar with the documents, simply the conclusions that some of them perhaps have drawn.

BY MR. BUTLER:

Q To your knowledge, are these documents mailed in response to inquiries dealing with the basis for any public statements by the Tobacco Institute which would indicate that smokers are unusually energetic, et cetera?

MR. ROTHMAN: If the question is, "Are they mailed to California", I have no objection.

MR. BUTLER: First, I want to find out if they were mailed and then I will want to find out if they were mailed to California

MR. ROTHMAN: No, do it right. I have no objection to California.

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BY MR. BUTLER:

Q Are they mailed to California?

A They would be in answer to a specific request for a specific document.

Q Who takes care of that; Communications?

A Yes, sir.

MR. ROTHMAN: That is not to interpret it as any evidence that they were sent to California; is that right, Mr. Kornegay?

THE WITNESS: That is right. Whether they have been or not, I do not know.

BY MR. BUTLER:

Q Reference is made in the various articles that the investigation was supported, in part, by the Tobacco Industry Research Committee, New York. Does the Tobacco Institute have any relations with the Tobacco Institute Research Committee?

A The Tobacco Institute Research Committee?

Q Right.

A I know of no such committee.

Q In other words, the name doesn't mean anything to you?

A No, sir, not Tobacco Institute Research Committee.

Q Is there something in substance in effect that is known as the TIRC; is there something called the Tobacco

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Industry Research Committee?

A Not to my knowledge. Tobacco Industry Research Committee?

Q Right.

A No, not to my knowledge.

Q Do you know the name of the organization which supports medical research dealing with tobacco which is supported by members of the tobacco industry in the United States?

MR. ROTHMAN: Let me have that question again?

(The pending question was read by the reporter.)

THE WITNESS: Yes.

BY MR. BUTLER:

Q What is the name of that?

A Council for Tobacco Research, USA, generally referred to as CTR.

Q Are there any other such committees other than CTR?

MR. ROTHMAN: Sir, I don't know what this has to do with jurisdiction.

MR. BUTLER: It is preliminary.

MR. ROTHMAN: That doesn't give it any magic.

MR. BUTLER: I want to find out what committees that he has knowledge of which are supported by the tobacco industry which support medical research in the field of tobacco and

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smoking and cancer.

MR. ROTHMAN: It is not relevant to the issue of jurisdiction over my client in California. Accordingly, I will object to the question and instruct the witness not to answer.

BY MR. BUTLER:

Q Do you know whether any members of the Board of Directors of Tobacco Institute are also members of the Council for Tobacco Research, USA?

A Let me answer it this way: some of the companies which are members of the Institute are also members of the Council for Tobacco Research, USA.

Q Would that include, in this instance, the defendant companies: Liggett & Myers; Reynolds?

MR. ROTHMAN: I am going to object to this entire line of inquiry, Counselor. I think you are so far afield now that it has nothing to do with jurisdiction. It seems to me that the question you are confronted with, and we are all confronted with, is whether or not the Tobacco Institute, as Mr. Kornegay is here testifying about, has or there is proper jurisdiction over it in California. That is the only issue we are talking about. What difference does it matter if there is an outlet called CTR? How does that affect the situation?

MR. BUTLER: To the extent that the Tobacco Institute would

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participate in the activities of CTR, to the extent that CTR would go into California. I want to know if there is any.

BY MR. BUTLER:

Q Do you have a file showing correspondence between the Tobacco Institute and CTR?

MR. ROTHMAN: I instruct the witness not to answer. It is not relevant to the issue of jurisdiction.

BY MR. BUTLER:

Q I have been shown a booklet, a list designated as No. 35 for identification. This is answered in response to the notice to produce a list of copies distributed of the magnificantly illustrated historical treatise entitled "Tobacco and Americans". Are you familiar with that particular illustrated historical treatise?

A Will you repeat the name of it?

Q It is called "Tobacco and Americans".

A Do you have a copy of ~~that~~ there?

Q I don't think we were given a copy.

A The only beautifully-illustrated publication that I know of that we have is referred to as the "Pioneer Booklet". I assume that is what you are referring to.

Q "Pioneer in American Industry"?

A Is that the one you were referring to?

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Q I don't know. I am trying to distinguish between the pamphlet which has been produced and the one which we requested.

A To my knowledge, Mr. Butler, that is the only beautifully-illustrated booklet that we have.

Q That particular beautifully-illustrated booklet was sent out to the names of the people listed in item No. 35, as I understand it. I wish you would affirm that fact for me.

MR. ROTHMAN: You see, you keep doing that over and over and over again. You made the conclusion that the mailing list, which is Exhibit No. 35, which is the mailing list of the documents which Mr. Quinn is holding. What is the number of that?

MR. QUINN: That is No. 111.

BY MR. BUTLER:

Q Can you clarify that?

MR. ROTHMAN: But you are misleading the witness. There is nothing on the record to establish that 35 is the mailing list for 111. As a matter of fact, sir, it is not.

MR. BUTLER: Do we have the item called "Tobacco and Americans", which I understand you agreed to produce; is that correct?

MRS. PFAELZER: Absolutely not. You know, I am getting very aggravated about this deposition because you are making statements and, particularly in view of the fact that when I

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came in this morning, particularly that we were to hand you in response to item No. 22, "all correspondence to Senator Moss" -- when the request read, "any and all correspondence received from Senator Moss". You got that document despite the fact that you did not even ask for it this morning.

MR. BUTLER: You must understand that the items we requested were the original documents, which were many in number. As a matter of a compromise, in the matter to get this matter moving, we said we would take less than what we asked for. When we got here, we thought we would have intelligent, adult cooperation so that we would not have to come back to Washington and, I assume, that the response that you gave me was an adult response to a reasonable request.

MRS. PFAELZER: That is just what you got.

MR. ROTHMAN: Are you now putting on the record the fact that you have not received full cooperation?

MR. BUTLER: We have not gotten full cooperation. We have gottan a modest modicum of cooperation which was shown between your office and my office.

MR. ROTHMAN: I defy you to point to one section of the agreement between Mr. Dann and Mrs. Pfaelzer which has not been done 100 percent.

MR. BUTLER: To the extent that the agreement is a compromise that is true, that you have given us practically everything.

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MR. ROTHMAN: Don't say "practically".

MR. BUTLER: I will say what I want to say.

MR. DAN: It appears that there may be some incompletion.

MR. ROTHMAN: That is hogwash. You got everything you wanted and more. Now to suggest that we haven't acted in an adult manner almost makes me feel that you are trying to provoke me.

BY MR. BUTLER:

Q You are not familiar with a document which I referred to previously called "Tobacco and Americans", Mr. Kornegay?

MR. ROTHMAN: That is his answer, the record will stand. I instruct him not to answer. He has answered four times.

BY MR. BUTLER:

Q Are you familiar with this distribution list of state tobacco tax administrators?

A No, sir, I am not.

Q Do you know if any attempt is made by the Tobacco Institute to send information to the state tobacco administrators in California?

A I do not.

Q I show you another group of documents which are called "Tobacco and Health", Nos. 37 through 62. Can you identify for me what these documents represent?

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A I am not familiar with any of these documents.

Q Are you familiar with the publication itself, the publication called "Tobacco and Health"?

A Each of these was published according to the date on it prior to the time I came to the Tobacco Institute.

Q As a result of your knowledge of the activities of the Tobacco Institute, subsequent to becoming president, do you know what the publication "Tobacco and Health" is?

A Let me put it this way: I have heard since coming with the Institute, at one time there was such a publication.

Q What was it for, do you know?

A I do not know.

Q Who would know?

A I suspect Mr. Kloepfer would have more knowledge on that than anybody else. It is in his area.

Q Was there an organization known as the Tobacco Information Committee which was a predecessor to the Tobacco Institute?

A Not to my knowledge, Mr. Butler. For the first time, I see Tobacco Information Committee on some of those early publications in '58, but I was unaware until I looked at that, that there ever was such a committee (Indicating).

MR. BUTLER: Would you please mark this for identification.

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(The document referred to was marked Plaintiff's Exhibit No. 34-A for identification and is attached hereto.)

MR. ROTHMAN: This is a letter dated March 27, 1969, from Frank Moss, United States Senate, and this is the document that Mrs. Pfaelzer handed you this morning?

MR. BUTLER: That is right.

BY MR. BUTLER:

Q I want you to identify for me that 34-A is, in fact, a letter written by you to Senator Moss and signed by you.

A Yes, sir, this certainly appears to be a letter which I wrote Senator Moss.

Q Do you remember the occasion on which you wrote that letter?

MR. ROTHMAN: I am going to object to the question and instruct the witness not to answer on the grounds that it is not relevant to the issue of jurisdiction.

BY MR. BUTLER:

Q Before writing that letter, did you consult with any of the Executive Committee of the Tobacco Institute?

A I could not say that I consulted with any member of the Executive Committee.

Q What I am trying to find out is whether you wrote the

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letter on your own or whether it was a letter which was written as a result of any other authority other than your own, such as the Board of Directors or the Executive Committee.

A Consultation was held with certain chemists or certain knowledgeable people about the subject matter of that letter, but your question was whether or not I consulted with members of the Executive Committee and I just have no recollection of whether I did or I didn't.

Q I want to call your attention to a sentence in the letter, "You have asked the cigarette companies for comments and this is their joint reply." Were you, in fact, replying for the cigarette companies in that letter?

A Yes, sir, I was.

Q How did you arrive at the conclusion that it was, in fact, a joint reply of the cigarette companies?

A I arrived at the conclusion when Senator Moss had been presented with [redacted] material from the federal testing laboratory. It was our responsibility to keep the records straight on such matters, particularly after he had made a rather unflattering statement about the industry.

Q And social responsibility?

A Yes, sir, which was entirely wrong. But it was based on erroneous information which I think he later acknowledged.

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Q Where did you get the authority to say for the cigarette companies, "This is their joint reply"?

A Where did I get the authority?

Q Yes.

A It obviously came as a result of some consultations that the statement that Senator Moss made was wrong. It needed to be corrected.

Q So you had some joint consultations?

A As situated in Washington for its member companies, took the position that it should form the reply.

Q And that that was the result of consultations with those companies; is that correct?

A It could have been, I am just saying to you I have no independent recollection of conferring with members of the Executive Committee.

Q Likewise, you wouldn't state that it was their joint reply in a letter such as this if, in fact, you had not met with them?

MR. ROTHMAN: I think the witness has answered it as best he could. I will not permit any further inquiry.

BY MR. BUTLER:

Q Mr. Kornegay, if there was a meeting with the cigarette companies with respect to this particular letter of

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March 27, 1969, would there be any written record of such a joint meeting?

A If there had been a Board meeting or an Executive Committee meeting, yes, there would be.

Q But otherwise, no?

A I can tell you with assurance there was no such meeting held in connection with this situation.

Q No such meeting, but what I am trying to find out is, would there be any written memorandum of such a meeting if one were held dealing with this particular letter?

A Yes, I would think so.

Q Is Mr. Franklin D. Dryden still at the Tobacco Institute?

A Yes, sir.

Q In what capacity?

A Senior Vice President.

Q I show you item No. 34, which is a letter dated December 23, 1970, addressed to you as President and Executive Director of the Tobacco Institute and ask you first of all, if that, in fact, was received by you?

MR. ROTHMAN: I would object to the question on the grounds it is not relevant to jurisdiction. Mr. Butler, that is the problem that we have had here. In an effort to be, as you put

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it, "adult", we have given you a mass of documents that were called for. Now you are off on questions that have nothing to do with jurisdiction. You are now playing with those documents. We have been doing that since early morning. Here is an exhibit, Exhibit No. 34, which is a letter between Mr. Kornegay and the Federal Communications Commission. What that has to do with jurisdiction, I don't understand. Can't we just stay with the matters that we are trying to dispose of?

MR. BUTLER: Let's have him answer.

MR. ROTHMAN: I am not going to have him answer the question. I object to it as not relevant.

MR. BUTLER: Is he directed not to answer?

MR. ROTHMAN: Yes.

MR. BUTLER: Do you want to stipulate that this is a business record kept in the usual and ordinary course of business in the Institute?

MR. ROTHMAN: I am not stipulating anything. I gave you the documents pursuant to your request and you got it. We have complied with everything we have said we would do in its entirety.

BY MR. BUTLER:

Q Did you, in fact, meet with Dean Burch, the Chairman of the Federal Communications Commission as a result of this

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letter of December 23, 1970?

MR. ROTHMAN: Objected to. The witness is instructed not to answer.

BY MR. BUTLER:

Q Is Mr. Cullman the Chairman of the Executive Committee of the Tobacco Institute?

A No.

Q Who is?

A A. H. Galloway.

Q Does the chairmanship change every year?

A No, sir.

Q How long has Mr. Galloway been Chairman of the Committee?

A Let me correct that. Mr. Galloway retired. Technically, I guess Mr. Galloway retired the 1st of April and Mr. William Smith will be the incoming Chairman of the Executive Committee.

Q What is the affiliation of Mr. Smith, with what company?

A R. J. Reynolds.

Q Mr. Cullman; who is he associated with?

A He is Phillip Morris.

Q And the one who is retiring?

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A R. J. Reynolds, Mr. Galloway.

Q Do they have offices within the Tobacco Institute?

A No, sir.

Q I show you item No. 113, "Tobacco, The $10,000,000 Question", remarks by Horace R. Kornegay to the Rotary Club of Chicago and ask if that is, in fact, a copy of the remarks that you gave on that particular occasion?

MR. ROTHMAN: Objected to as not relevant and I instruct the witness not to answer.

BY MR. BUTLER:

Q Has this particular document been reprinted?

MR. ROTHMAN: Objected to on the grounds that it is not relevant unless you limit the question to California.

MR. BUTLER: First, I want to determine if it is reprinted.

MR. ROTHMAN: You and I have a fundamental difference on how that is done. You are seeking information on the basis of asking ground questions. If you want to ask him if copies of that were made available to the public of California, I will not object.

BY MR. BUTLER:

Q How does one get a copy of this particular document, "Tobacco, The $10,000,000 Question"? Is it made available to the public?

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A If someone wrote to the Institute requesting a copy of it, it would be made available.

Q Is that the only way it is made available?

A To my knowledge. It may have been distributed to the tobacco trades. I do not have personal knowledge of whether it was or it wasn't.

Q Have you ever given this particular speech in California?

A No, sir.

Q Have you ever made a tape of that particular speech for distribution in California?

A No, sir.

(Brief recess period.)

BY MR. BUTLER:

Q I show you item No. 92, which has been marked for identification, and it is an editorial from the Sacramento Bee, dealing with The Watson Initiative. Can you tell me whether the California Watson Initiative was ever a member of discussion at any of the executive board meetings or the Board of Director meetings of the Tobacco Institute?

MR. ROTHMAN: I object. It is not relevant to the question of jurisdiction and I instruct the witness not to answer.

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BY MR. BUTLER:

Q I show you a press release identified as item No. 142 and ask you to take a look at it.

MR. ROTHMAN: All right.

BY MR. BUTLER:

Q Mr. Kornegay, the press release states that it is dealing with a statement that the "cigarette industry today went to court to protest as 'unconstitutional and illegal censorship' the Federal Communications Commission ruling on anit-smoking messages."

"Kornegay said he has been informed that other major cigarette manufacturers are preparing petitions to intervene in the case. He said he has instructed counsel for the Institute itself to also intervene." Did you, in fact, intervene in that litigation?

MR. ROTHMAN: Objected to as not relevant to the question of jurisdiction and I instruct the witness not to answer.

BY MR. BUTLER:

Q On December 17, 1970, did you write a letter with the attached accompanying letter of December 17, 1970, to the FTC?

MR. ROTHMAN: Objected to as not relevant to the issue of jurisdiction and I instruct the witness not to answer.

MR. DAN: These are Exhibits Nos. 139 and 140, for the record.

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BY MR. BUTLER:

Q Showing you item No. 134, which is entitled "For Use By UPI", from the Tobacco Institute, purporting to be a statement of all of the major cigarette companies with respect to the cigarette industry's involvement with marijuana. Did such a press release commence from the Tobacco Institute from the six companies that you make mention of?

A Yes.

Q Were you authorized by each of the companies whose names were mentioned to issue such a release?

A I was authorized to use the statements that were made by each person and carried in the release itself.

Q You were authorized to use the statements and also to make the release?

A Yes, sir.

Q Was that the subject of any executive board meeting?

A No, sir.

Q You just did it? Did you do it in the ordinary course of your business without any particular meeting with the representatives of those companies?

A That is right, yes. Their position was solicited by the Institute. When we were advised as to what their positions were relative to their plans on this marijuana business, then

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this is the result of it. There was no meeting held in connection with it.

Q I want to show you an item numbered as 146, dated October 9, 1970, addressed as a letter to members of Congress. Was that sent by you to each of the members of Congress including the members of California?

MR. ROTHMAN: I object. Including the members of Congress? I withdraw the objection.

THE WITNESS: Yes, sir.

BY MR. BUTLER:

Q Do you, from time to time, send letters to members of Congress including the members from California?

MR. ROTHMAN: I think it should be: did he send anything to the California delegation in Congress. I have no objection to that.

BY MR. BUTLER:

Q I want to know just generally, is it your practice, when you were addressing members --

A To my knowledge, that is the only letter I have ever sent to the entire Congress. On one other occasion, I sent a letter to a large number of the members whom I knew personally and perhaps some of them were from California, because I do know some of the members from California personally.

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Q Who do you know personally from California?

A To answer you without taking a lot of time, in 1968, I think I knew every member from California and those who were here in Congress in 1968 and remained here, I know. I can go through and list them, if you want me to.

Q To the extent that you can, I would appreciate it.

A I know Congressman McFalls, Congressman Johnson. I know Congressman [redacted]. I know Congressman Van Deerlin. I know Congressman Burton and I know Congressman Bob Wilson and I know Congressman, now Senator, Tunney. He was in the House at the same time I was. I know both the Clawsons.

Q I know one is [redacted] Clawson. Who is the other?

A One is [redacted] and the other is Don. Both of them are Republicans. ~~I know John mostly~~. I know Alan Smith. Alan may have left the Congress. H. Alan, I believe. He left the last [redacted].

MR. ROTHMAN: I think that is good now.

THE WITNESS: I could go on. If I had the list, I could run down and tell you exactly. Jim Corman, I know him too.

BY MR. BUTLER:

Q Did you ever have occasion to talk to these gentlemen with regard to any of the business of the Tobacco Institute?

A I can't really recall talking with any of them

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recently. I have seen them recently, but usually it is only a social occasion. They may ask, "How is everything in the Tobacco Institute?" I will say, "Well, it is fine. We are staying busy and I know you are." But we never really get down to any details.

Q You don't?

A I haven't.

Q At any time since you have been president?

A I may have had one conversation with Van Deerlin back in 1969. As I say, I may have because my recollection is bad.

Q Do you know generally what the subject matter was?

A Assuming if I did have one --

MR. ROTHMAN: Don't speculate on it.

THE WITNESS: No, I couldn't tell you.

BY MR. BUTLER:

Q You had some recollection, isn't that correct, of meeting with Mr. Van Deerlin?

A The only reason I have any recollection is that the occasion I saw him, shortly after I came with the Institute -- and I knew him quite well when I was in Congress, served on the same committee with him -- we may have discussed then what I was doing in the business. That is the extent of it.

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Q Did you ever talk to any member of Congress with respect to the passage of any legislation dealing with the tobacco legislation?

MR. ROTHMAN: Any California member?

MR. BUTLER: That is right.

THE WITNESS: With the possible exception of the time that I referred to about Van Deerlin.

BY MR. BUTLER:

Q Can you explain the exception with respect to Mr. Van Deerlin?

MR. ROTHMAN: We just have.

MR. BUTLER: To the extent that you blocked it, he has.

MR. ROTHMAN: He explained it. He went into it for five minutes.

BY MR. BUTLER:

Q What did it have to do with? What particular bill or subject matter dealing with the Tobacco Institute business did it have to do with?

A The Public Health Smoking Act of 1969 or 1970 referred to in both [redacted].

Q Did you make known to him the position of the Tobacco Industry with respect to that bill?

A Yes, sir.

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Q Did you, in substance and effect, ask him to support that particular position?

A I can't recall that I went that far. If the conversation took place, it dealt primarily with the question of broadcast advertising because that was one of the elements in that particular bill.

Q As a good advocate, sometimes you just make the facts known?

MR. ROTHMAN: Let's get the state of this record clear. The witness is trying hard to help you. He indicated he doesn't even remember if he had such a conversation. Starting with that premise, we are taking off on a whole hypothetical conversation as to what the conversation might have been. He doesn't recall whether he had any such conversation. I don't think you have the right to push it any further.

BY MR. BUTLER:

Q Is that correct, Mr. Kornegay, that you don't recall the conversation?

A I can recall having a conversation with him and I was over there walking down the hall and, as I walked down by his office, he said, "Come on in." We had a conversation. It was some time in fairly early '69, because it was the first time I had seen him since I left the Congress. He wanted to know what

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I was doing, how things were going. This has been four years ago. I, for the life of me, couldn't quote the conversation.

Q But the substance was with respect to that particular act of Congress?

A Yes, if it came up, but I wasn't there to solicit his support.

Q I show you item No. 143, dealing with the subject matter of "smoking dogs". Was that a release of the Tobacco Institute dealing with that particular subject?

A Yes, it certainly appears to be.

Q From time to time, as president of the Tobacco Institute, do you answer any particular statements of the American Cancer Society, or is this the only such instance, if you recall?

MR. ROTHMAN: I object to the question as to its relevancy to the issue of jurisdiction, unless you are talking about California.

BY MR. BUTLER:

Q No, of course, the American Cancer Society is a national organization; isn't that correct?

MR. ROTHMAN: Are you talking to me?

MR. BUTLER: I am talking to the witness.

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BY MR. BUTLER:

Q Is that correct?

A Yes, sir, I understand they are.

Q As part of the program of the Institute, do you from time to time answer statements published by the American Cancer Society?

MR. ROTHMAN: In California?

MR. BUTLER: Nationwide, including California.

THE WITNESS: If they make some statement that is way out of line, in our effort for full, free and frank discussions of this subject, we like to keep the record straight and we don't hesitate to issue a press release setting the true facts out.

BY MR. BUTLER:

Q Is that part of your activities, actually to be sort of a -- if I may use the expression -- "watchdog" with reference to such organizations as the American Cancer Society, to answer the statements which they make to the public media?

MR. ROTHMAN: I will permit the witness to answer questions which are directed to what they have done with regard to responding or answering the American Cancer Society in California. Beyond that, I think the questions are not relevant. I object to the last question both as to its form and its substance and I instruct the witness not to answer.

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MR. BUTLER: I have nothing further, unless my associate has something.

MR. DAN: No.

MR. ROTHMAN: Thank you.

(Whereupon, at 12:30 o'clock p.m., the taking of the depositions was recessed, to reconvene at 1:30 o'clock p.m., the same day.)

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MR. BUTLER: I have nothing further, unless my associate has something.

MR. DAN: No.

MR. ROTHMAN: Thank you.

(I have read the foregoing pages 13 through 205, inclusive, which contain a correct transcript of the answers made by me to the questions therein recorded.)

HORACE R. KORNEGAY

(Thereupon, at 12:30 p.m., the taking of the depositions was recessed to reconvene at 1:30 p.m. the same day.)

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